Supreme Court, U.S.
FILED
MAY 16 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1950

No. 645

HUMBLE OIL & REFINING COMPANY, *Petitioner*,

v.

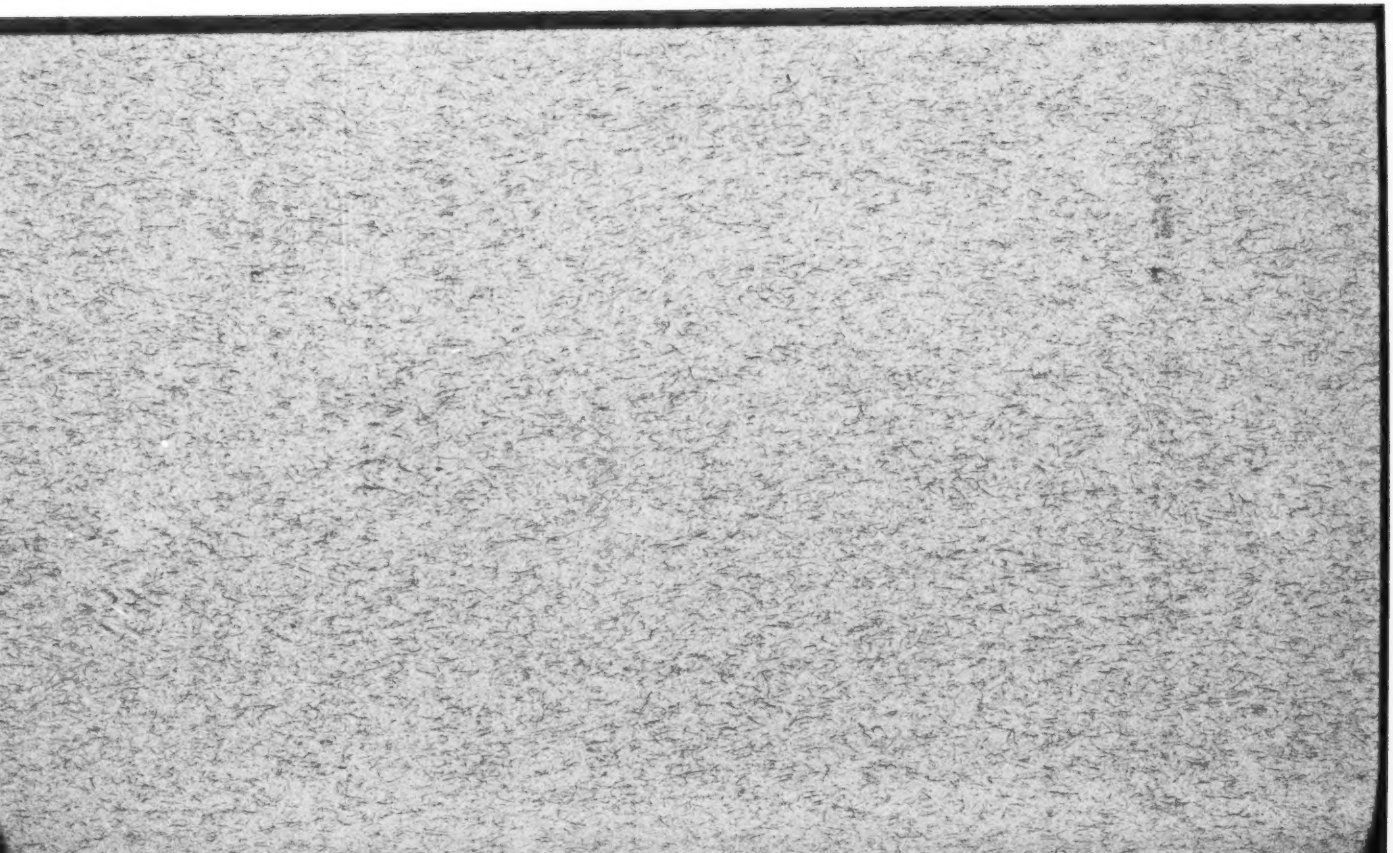
GRAY TOOL COMPANY, *Respondent*

PETITIONER'S REPLY BRIEF

NELSON JONES,
Counsel for Petitioner

REX G. BAKER,
MELVIN F. FINCKE,
VINSON, ELKINS & WEEMS,
J. VINCENT MARTIN,
JACK D. HEAD,
Of Counsel

ALPHA LAW BRIEF CO., HOUSTON



IN THE

Supreme Court of the United States

OCTOBER TERM 1950

No. 645

HUMBLE OIL & REFINING COMPANY, *Petitioner*,

v.

GRAY TOOL COMPANY, *Respondent*

PETITIONER'S REPLY BRIEF

---

1. There is Not and Cannot Be Any Issue As To The Material Facts Because The Material Facts Are Established by Respondent's Judicial Admissions.

That the Judgment of the District Court dismissing the Complaint is based upon the judicial admissions of Respondent (Plaintiff) will be apparent from its opinion, 92 F. Supp. 722, 728:

> "Defendant has filed its Motion for Summary Judgment, basing it wholly and solely upon the pleadings, depositions and affidavits, etc., filed by Plaintiff herein.
>
> * * *
>
> "I think the record in this case shows it to be *indisputably* true that Plaintiff is misusing the patents in suit." (Emphasis ours.)

The material facts, set forth in foot note (1) of the District Court's opinion, 92 F. Supp. 723, clearly reveal that Respondent is misusing its patents under the rule announced by this Court in the cases cited and followed by the District Court. Respondent's judicial admissions quoted in said foot note have not, and cannot be, disputed by Respondent.

The Court of Appeals did not challenge the correctness of the trial court's findings of fact. Instead, the Court of Appeals disagreed with the trial court's conclusion that, as a matter of law, the undisputed material facts support the summary judgment on the ground of misuse. The Court of Appeals held that, regardless of the *facts*, the *intent* of Respondent is controlling and must be obtained from Respondent's statements of intent rather than from Respondent's pleadings and judicial admissions. The Court of Appeals said, 186 F. 2d 367:

> "The defense of misuse of patents, like other unclean hands defenses, is not as defendant seems to think, a matter of the letter of *bare bone facts*: it is a matter of their spirit, the *intent* with which they are done." (Emphasis ours.)

Review is sought by the Petition herein on the ground that no rule should be established under which a Plaintiff who is misusing a combination or method patent to establish a monopoly on the elements of the combination, may

avoid dismissal of his complaint by denying that he has the intention in respect to establishing a monopoly.

2. Respondent's Argument as to *Petitioner's Alleged Misconduct.*

Respondent is the Plaintiff in this case. The District Court granted Summary Judgment dismissing Respondent's complaint on the ground that Respondent is misusing the patents in suit. The Court of Appeals reversed.

Petitioner is the Defendant in this case. Petitioner seeks only a dismissal of the Complaint to put an end to this expensive and burdensome litigation.

The question presented is whether the rule that a Court of equity should not lend its aid to a Plaintiff who is misusing the patents in suit is subject to the exceptions and limitations announced by the Court of Appeals.

The answer to this question affects not only the parties to this litigation. It affects manufacturers other than Respondent who are selling the equipment in competition with Respondent. It affects producers of oil other than Petitioner who are purchasing the equipment. Future litigants in unrelated fields of activity inevitably will be affected if the decision of the Court of Appeals is permitted to stand.

It is therefore respectfully submitted that the Petition should be granted in order that this question of great public importance may be finally decided by this Court.

3. Respondent's Argument as to the Decision of the Court of Appeals With Respect to Summary Judgment in Patent Cases.

Respondent's quotations on page 15 of its brief are from the opinion of the Court of Appeals in HAWKINSON v. DENNIS, 166 F. 2d 61.

In the present case, the decision of the Court of Appeals is such that if the Petition herein is denied, District Judges will feel compelled:

1. To try patent cases as a whole on all issues.
2. To attempt to "contrive and confect" decrees to permit plaintiff to recover where the Court finds the patent valid and deliberately infringed, even though the Court also finds that plaintiff is misusing the patent in whole or in part.

Respectfully submitted,

NELSON JONES,

Counsel for Petitioner

REX G. BAKER,
MELVIN F. FINCKE,
VINSON, ELKINS & WEEMS,
J. VINCENT MARTIN,
JACK D. HEAD,
Of Counsel

May 14, 1951.

Office-Supreme Court, U.
FILED
JUN 1 1951
CHARLES ELMORE CROPL
CLE

IN THE

Supreme Court of the United States

OCTOBER TERM 1950

No. 645

HUMBLE OIL & REFINING COMPANY, *Petitioner*,

v.

GRAY TOOL COMPANY, *Respondent*

PETITION FOR REHEARING

NELSON JONES,
Counsel for Petitioner

REX G. BAKER,
MELVIN F. FINCKE,
VINSON, ELKINS & WEEMS,
J. VINCENT MARTIN,
JACK D. HEAD,
Of Counsel

ALPHA LAW BRIEF CO., HOUSTON